IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 143.

VERNA LEIB SUTTON,

Plaintiff-Appellant,

vs.

R. WELLS LEIB,

Defendant-Appellee.

STATEMENT, BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE.

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INTRODUCTORY

The Statement, Brief and Argument for Appellant, as required by rules, correctly reports the publication of the Opinion of the Circuit Court of Appeals and the jurisdictional grounds. The statement of facts taken from the Opinion of the Court of Appeals we also concur in with one correction, viz: the date July 1, 1944 appearing in the last paragraph on page 3 of Appellant's Brief, is erron-

eous. Such date is correctly given by Justice Kerner in his Opinion as May 1, 1944. (See Trans. P. 88).

The Contested Issues

We do not concur in Appellant's statement of contested issues. The first contested issue stated by Appellant on page 4 of his Brief, is whether defendant was relieved of his obligation to pay alimony by the payment of two months past due alimony. Such inquiry is unnecessary to a decision of this case. It is our thought that there is only one vital issue in this cause, and that issue is whether the Illinois courts are duty bound to give full faith and credit to the Nevada marriage of the plaintiff-appellant, or the subsequent New York decree of annulment of such marriage.

PROPOSITIONS OF LAW

I.

The payment of $180.00 due the plaintiff on July 3, 1944 was a complete satisfaction of the Illinois decree. It was not a release of any sum due in future but was an acknowledgment of full payment of a past due obligation. The unfortunate use of the word "release" in the findings of the trial court is no part of the judgment of that court.

A. The court's decision of a case is its judgment thereon. Its opinion is a statement of the reasons on which the judgment rests.

Rogers vs. *Hill*, 289 U.S. 582, 77 L. ed. 1385 at p. 1389;

In re Forstner Chain Corporation, 177 Fed. (2d) 572 at p. 576;

Baxter vs. *City and County of Dallas*, 131 Fed. (2d) 434;

Amsinck & Co. vs. *Springfield Grocer Co.*, 7 Fed. (2d) 855 at 858.

B. There is a distinction between "satisfaction" and "release."

Miller vs. *Beck*, 108 Ia. 575;

Harrison vs. *Henderson*, 67 Kans. 194;

Glucksman vs. *Board of Education of New York*, 164 N.Y.S. 351;

Manthei vs. *Heimerdinger*, 332 Ill. App. 335;

Essington vs. *Parish*, 164 Fed. (2d) 725.

II.

The plaintiff was validly married in Nevada, in Illinois, and in every state in the Union as of July 3, 1944.

A. A marriage is valid everywhere if the requirements of the marriage law of the State where the contract of marriage takes place are complied with.

Williams vs. *North Carolina* (I), 317 U.S. 287, 307;
Williams vs. *North Carolina* (II), 325 U.S. 226, 239;
Loughran vs. *Loughran*, 292 U.S. 216;
Travers vs. *Reinhardt*, 205 U.S. 423;
Pierce vs. *Pierce*, 379 Ill. 185, 190;
Youmans vs. *Youmans*, Minn. ; 15 N.W. (2d) 537; 154 ALR 1171, 1177 (adoption);
Brown vs. *United States*, 164 Fed. (2d) 490 (3rd. Cir.);
Lembcke vs. *U.S.*, 181 Fed. (2d) 703, 704, (2nd. Cir.);
Restatement—"Conflict of Laws" Sec. 121;
Reifschneider vs. *Reifschneider*, 241 Ill. 92;
Stevens vs. *Stevens*, 304 Ill. 297;
Ertel vs. *Ertel*, 313 Ill. App. 326 (331);
Powell vs. *Powell*, 207 Ill. App. 202. Affd. 282 Ill. 357;
Criss vs. *Industrial Commission*, 348 Ill. 75 at 80.

B. Unless and until the *Nevada* courts invalidate the marriage of the plaintiff, the Illinois courts are required to give full faith and credit to such Nevada marriage.

Williams vs. *North Carolina* (I), 317 U.S. 287, 307;
Williams vs. *North Carolina* (II), 325 U.S. 226, 239;
Lehmann vs. *Lehmann*, 225 Ill. App. 513 at 526.

C. The New York decree of annulment has not and cannot have extra-territorial effect beyond the borders

of New York. Such New York decree is binding only upon domiciliaries of that State.

Williams vs. *North Carolina* (I), 317 U.S. 287, 307;
Williams vs. *North Carolina* (II), 325 U.S. 226, 239;
Loughran vs. *Loughran*, 292 U.S. 216, 223 (78 L. Ed. 1219, 1223);
Lembcke vs. *United States*, 181 Fed. (2d) 703, 704;
Criss vs. *Industrial Commission*, 348 Ill. 75 at 80;
Pierce vs. *Pierce*, 379 Ill. 185 at 189;
Reifschneider vs. *Reifschneider*, 241 Ill. 92 at 96;
Restatement of the Law (Conflict of Laws) Sec. 134;
Alaska Packers Association vs. *Industrial Acci. Com.*, 294 U.S. 532;
Re *Youmans*, Minn. ; 15 N.W. (2d) 537, 154 ALR 1171, 1177;
New York vs. *Halvey*, 330 U.S. 610, 617, 618.

ARGUMENT

The Brief and Argument of Appellant consumes many pages in a discussion of the meaning of the correspondence termed by the trial court as a "release." We do not intend to devote much time or space to such subject matter. There appears to the writer to be but one vital issue in this entire cause, and that issue is whether or not the Appellant, Verna Leib Sutton, was validly married in Reno, Nevada on July 3, 1944, and whether such marriage relieved the appellee, R. Wells Leib, from the further payment of alimony under the 1939 divorce decree obtained by his former wife. The third and later question, is whether the New York decree of annulment entered in June of 1947 by the New York courts is of any binding effect upon the Illinois courts, and whether the obligation to pay alimony extinguished in 1944 by the marriage, is revived in 1947 by the New York annulment. In other words, can the plaintiff-appellant marry, annul, remarry and annul, and collect alimony between her successive marriages following her successive annulment decrees.

With the foregoing brief outline of the matters to be dealt with in the ensuing argument, we proceed to briefly discuss the unimportant question of the "release."

I.

The record discloses that the plaintiff, Verna Leib, married Walter Henzel in Reno, Nevada, on July 3, 1944, and that at a later date the married couple returned to the State of New York. Plaintiff then caused her attorneys to demand from the defendant the alimony due to her on June 1 and July 1, 1944, accompanying such de-

mand with the statement that *she was now remarried and that the defendant was relieved from the further payment of alimony* as required by the Illinois divorce decree of 1939. Correspondence ensued concerning the exact amount then owing which was ascertained to be $180.00 which the defendant promptly paid and received in reply an acknowledgment of the receipt of such sum and the further *acknowledgment that such remittance satisfied in full the alimony claim* of the former Mrs. Leib. This correspondence appears at pages 60 to 66 of the Transcript, the final letter dated September 8, 1944, appearing at transcript page 66. The correspondence discloses beyond question that there was no demand for, or settlement of, alimoney to become due *in futuro*. The demand was for, and the settlement was on account of, alimony due to the plaintiff at the time of her remarriage. The correspondence further discloses that it was fully realized by the plaintiff and her counsel that her Nevada marriage had extinguished the obligation of the Illinois divorce decree. The defendant, upon the trial of the cause in the District Court did not plead a *release* of this obligation. He did make a motion for a summary judgment upon the ground that the Nevada marriage of the plaintiff had *extinguished* any rights formerly possessed by her to alimony. The trial court, (as is required by rule,) rendered an opinion in advance of the judgment containing specific findings of law and fact. In his findings the trial judge inadvertently used the word "release" concerning the correspondence above mentioned, and gave among other reasons for his ultimate decision, the fact that the plaintiff had voluntarily, deliberately and knowingly released her former husband from further alimony payments. The findings of the Court, preliminary to its judgment

of dismissal in bar, is no part of the judgment itself and release was not pleaded as a defense by the defendant. The entire controversy in the trial court turned upon the single question of whether the plaintiff, Verna Leib, had entered into a valid marriage contract in Nevada with Walter Henzel. The opinion and findings of the trial judge appears in the Transcript at page 44. The trial judge (Trans. 48) concludes his findings with the statement: "We are thus confronted with two conflicting decisions of sister states and it would be an incongruous situation for this court to undertake to determine which if either of such decisions should in this proceeding be accorded full faith and credit. Fortunately we are not called upon to do so as the parties themselves accepted the validity of the Nevada decree and at a time when such decree had never been challenged, entered into a contract settling the question of accrued alimony." The formal judgment of the trial court from which the successive appeals are now taken, appears at Transcript p. 49, and is a substantial repetition of the findings of law and fact. The plaintiff's suit in the trial court was accordingly dismissed, not because she had given a release, but because she had remarried and by so doing had satisfied, terminated and abrogated her right to receive alimony from her former husband. We have cited in our Brief of Authorities but a few cases to the effect that the findings and opinion of a Court are not the judgment of the Court and that if the *judgment* entered by the Court is right and just, the reasons actuating such judgment are not open to investigation or controversy. We do not repeat such citations nor discuss the same seriatim in this argument.

II.

We now proceed to the principal question as to the effect of a valid marriage in Nevada upon the courts of Illinois, in the construction of the Illinois divorce and alimony decree. We assert it to be the unanimous holding of all our courts and text writers that a marriage validly contracted in one state is valid elsewhere. Cases to this effect are cited in our Brief of Authorities under Section II. To this effect are the two most recent decisions of this Court namely, *Williams vs. North Carolina* (I and II).

In first *Williams vs. North Carolina*, 317 U. S. at page 307, this Court was dealing with the validity of a Nevada divoree and marriage and it is conceded in that decision both in the majority opinion and in the dissenting opinion, that a Nevada divorce decree entered in favor of a person then resident in Nevada and in conformity with the residence requirements and judicial procedure of that state, must be taken at its full face value in all other states. At page 299 of that decision this Court said:

> "It therefore follows that, if the Nevada decrees are taken at their full face value (as they must be on the phase of the case with which we are presently concerned), they were wholly effective to change in that state the marital status of the petitioners and each of the other spouses by the North Carolina marriages."

Following at page 301 of that decision, this Court again said:

> "But where a state adopts, as it has the power to do, a less strict rule, it is quite another thing to say that its decrees affecting the marital status of its domiciliaries are not entitled to full faith and credit in sister states. Certainly if decrees of a state altering the marital status of its domiciliaries are not

valid throughout the Union even though the requirements of procedural due process are wholly met, a rule would be fostered which could not help but bring considerable disaster to innocent persons" etc.

Continuing at page 303 this Court said:

"So when a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause merely because its enforcement or recognition in another state would conflict with the policy of the latter."

Mr. Justice Frankfurter, in his concurring opinion at page 306 said: —

"There is but one respect in which this Court can, within its traditional authority and professional competence, contribute uniformity to the law of marriage and divorce, and that is to enforce respect for the judgment of a state by its sister states when the judgment was rendered in accordance with settled procedural standards."

In the second *Williams vs. North Carolina case*, 325 U.S. 226, Mr. Justice Frankfurter again, at page 237 of the reported decision, states: —

"If a state cannot foreclose on review here, all the other states by its finding that one spouse is domiciled within its bounds, persons may, no doubt, place themselves in situations that create unhappy consequences for them. This is merely one of those untoward results inevitable in a Federal system in which regulation of domestic relations has been left with the States and not given to the national authority. But the occasional disregard by any one state of the reciprocal obligations of the forty-eight states to respect the constitutional power of each to deal with domestic relations

of those domiciled within its borders is hardly an argument for allowing one State to deprive the other forty-seven States of their constitutional rights."

Mr. Justice Murphy concurring in the same decision, at page 239, of the report states:—

"The State of Nevada has unquestioned authority, consistent with procedural due process, to grant divorces on whatever basis it sees fit to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders."

Mr. Justice Rutledge, in the same decision, appearing at page 244 of the report, sheds further light upon the question by the following language:—

"Nevada's judgment has not been voided. It could not be if the same test applies to sustain it as upholds the North Carolina convictions. It stands, with the marriages founded upon it, unimpeached. For all that has been determined or could be, unless another change is in the making, petitioners are lawful husband and wife in Nevada. (citations) They may be such everywhere outside North Carolina."

Mr. Justice Rutledge continues on pages 246 and 247 with the following pertinent language:—

"What exactly are the effects of the decision. The court is careful not to say that Nevada's judgment is not valid in Nevada. To repeat, the court could not so declare unless a different test applies to sustain that judgment then supports North Carolina's. Presumably the same standard applies to both, and each state accordingly is free to follow its own policy, wherever the evidence, whether the same or different, permits conflicting inferences of domicile as it always does when the question becomes important . . . The necessary conclusion follows that the Nevada decree was valid and remains valid within her borders. So

the marriage is good in Nevada, but void in North Carolina just as it was before the jurisdictional requirement of domicile was freed from confusing refinements about matrimonial domicile," etc.

We have cited in our Brief the case of *Loughran vs. Loughran*, 292 U. S. 216, where the marital status of litigants was involved, and Mr. Justice Brandeis, in that decision laid down the oft repeated rule, at page 223:—

> "That a marriage, not polygamous or incestuous, or declared void by statute will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction. The mere statutory prohibition by the state of the domicile, either generally of the remarriage of a divorced person or of remarriage within a prescribed period, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another state in conformity with the laws thereof."

Mr. Justice Brandies, at page 227 of the same decision, stated that:—

> "One state may in the exercise of the police power, prohibit the enjoyment by persons within its borders of many rights acquired elsewhere and refuse to tender the aid of its courts to enforce them."

Based upon the quoted langauge of these decisions (and many others cited in our Brief, Section II), we may concede that the State of New York, in the exercise of its police power, and presumably of its own public policy, may refuse to extend its aid to citizens within its own borders, or to recognize, within the boundaries of New York, rights and status acquired in other states and enforcible and recognized in all other states, except New York. What we are trying to say at this point is that the action of the New York courts declaring the marriage of

Verna Henzel to be null and void, is merely the expression of the public policy and the police power of New York only. Such New York annulment decree did not effect the records in Nevada, nor in Illinois, nor in any other of the forty-seven states, and it is our position, therefore, that the plaintiff in the instant cause is validly married in every state in the Union, except New York, and has been so validly married since July 3, 1944. Especially is she "remarried" within the language and meaning of the Illinois divorce decree under which she now attempts to collect alimony from her former spouse, the defendant.

The plaintiff-appellant, in Ler Brief, concedes (Page 17 of plaintiff's Brief) that "Illinois had no occasion to pass upon the validity of the remarriage of the plaintiff to Henzel. Nor has Nevada passed upon this question." The plaintiff further, at page 10 of her printed Argument, concedes our position when her counsel states, "we emphasize that the obligation is an Illinois obligation and under the well settled rules of this Court the Federal Court must determine whether or not Illinois courts, passing upon these issues, would hold the defendant discharged."

We have included in our Brief, Section H, a number of Illinois Supreme Court decisions, each illustrative of the fact that Illinois recognizes a marriage as valid and binding if valid and binding by the laws of the state where entered into. The case of *Pierce vs. Pierce*, 379 Ill. 185, is an instance where the Supreme Court of Illinois recognized the validity of a common law marriage in Nevada long after common law marriages had been prohibited in Illinois, stating that "the status of citizens of a state in respect to the marriage relationship is fixed and determined by the law of that state, but marriages of citizens of one

state, celebrated in another state which would be valid there, are generally recognized as fixing the status in the state of the domicile."

Again in *Criss vs. Industrial Commission*, 348 Ill. 75, at page 80, the Illinois courts recognized the validity of the marriage in Alabama of Illinoi parties who were prohibited by Illinois law from marrying within one year from a previous divorce. The Illinois Supreme Court held in this case that the prohibition of marriage to its citizens had no extraterritorial effect, and that since the parties were validly married in Alabama, according to the laws of Alabama, that the marriage would be recognized in Illinois.

Again in *Stevens vs. Stevens*, 304 Ill. 297, the Supreme Court of this state again recognized the validity of a foreign marriage prohibited to Illinois citizens in Illinois. Our Supreme Court there stated "the status of citizens of a state in respect to a marriage is fixed by the law of that state, but marriages of citizens of one state, celebrated in another state, and which would be valid there, are generally recognized as fixing the status in the state of domicile."

The overwhelming weight of authority upon this proposition illustrated by the foregoing citations and quotations therefrom, is codified in Restatement of the Law under the title "Conflict of Laws," Sec. 121, as follows:—

"TOPIC I MARRIAGE

121. Law governing validity of marriage.

Except as stated in 131 and 132 (polygamy, incestuous, etc.) a marriage is valid everywhere if the requirements of the marriage law of the state where the contract of marriage takes place are complied with."

The third and final issue of the present cause concerns the effect of the New York decree of annulment upon the *status* of the plaintiff in Nevada, in Illinois and in all states, except New York. It is our contention and position that even though New York, because of its own public policy, police power and regulation of its own citizens may see fit to deny, within its own borders, the benefits, fruits and status acquired in other states, that such denial to its own citizens of the incidents flowing from a legal contract, does not nullify, invalidate nor negate the status of such persons in other states where such status, benefits and rights were lawfully acquired. In other words, the New York decree of annulment was and is effective only in the State of New York. A mere series of questions will epitomize the logic of our argument and position. If the plaintiff and her husband, Walter Henzel, had remained in Nevada, would they have been married or not in Nevada? If they had come from Nevada to Illinois and established a domicile in Chicago, would they be guilty of bigamy or living in an open state of adultery in Illinois? If the authorities in any state in the Union (except New York) had prosecuted the plaintiff and her new husband, as was done in Williams vs. North Carolina, for bigamy, could the parties have been held guilty of such crime in Nevada, Illinois, California, Louisiana or any other states, except New York? There is certainly but one answer to the foregoing questions.

Lastly, how can the Illinois courts give full faith and credit to judgments, decrees, divorces and marriages of two sister states which are diametrically opposed to each other. Nevada entered a divorce decree; the parties were validly married in Nevada; New York granted separate mainte-

nance to the former wife of Walter Henzel and granted a decree of annulment to the plaintiff from her marriage to Walter Henzel. Illinois and the Illinois courts are now called upon to give full faith and credit to these judgments, decrees and laws of two sister states. Yet the courts of Illinois, in giving full faith and credit to the Nevada divorce and marriage, must ignore, refuse to recognize and deny full faith and credit to the New York decree. If upon the other hand the Illinois courts give full faith and credit to the New York annulment decree, they must at the same time refuse full faith and credit to the Nevada marriage. As stated by the Trial Judge in his findings (Trans. 48) "We are thus confronted with two conflicting decisions of sister states, and it would be an incongruous situation for this court to undertake to determine which if either of such decisions should in this proceeding be accorded full faith and credit."

In conclusion we wish to remind this Court that the defendant, R. Wells Leib, was not a party to any of these proceedings, marriages, divorces or annullments in the two sister states. He had no notice thereof and no opportunity or right to assert his rights either in Nevada or in New York. In effect, he is an innocent bystander, now sought to be involved by the migratory marriage and divorce, desires and activities of his former wife. He is now called upon to pay $5,000 in alimony, which his former wife notified him in 1944 was at an end, and he is now, five years later, subjected to an obligation from which he was freed and discharged by his wife's marriage (and her written acknowledgment thereof), to another man in Nevada. If the doctrine of clean hands has any application in a court

of equity, this is certainly the proper case in which to apply such a doctrine.

Respectfully submitted,

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